Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1998

William Timothy Fister,
parent and guardian on behalf of Mary Fister

Petitioner,

v.

Minnesota New Country School

On Petition For Writ Of Certiorari
To The 8th Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

William Timothy Fister
guardian and parent on behalf of Mary Fister
pro se
314 South 3rd St.
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57 pp

When does a public school student have the right to free expression in their personal workspace at the public school?

If a public school student is expelled for materially and substantially disrupting the educational process, then does the student have a right to a trial to address the question of disruption?

If the facts are disputed can a Summary Judgement be granted to the party with the burden of proof?

Can pure speech which is not per se offensive be considered harassment?

Can evidence be controverted by a general claim of its dispute?

If a public school utilizes the services of a lawyer in a disciplinary action against a student, is it equally obliged to provide the services of a lawyer for the student against whom it takes the action?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner William Timothy Fister, on behalf of his daughter Mary Fister, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on May 11, 1998.

OPINIONS BELOW

The decision of the Court of Appeals (App. 1-4) is unreported. The rulings of the District Court (App. 5, 6-21, 22-3, 25, 26-8, 30) are unreported.

BASIS FOR JURISDICTION.

I am asking the Supreme Court to review the judgment of the 8th Circuit Court of Appeals filed on May 11, 1998 in Fister v. Minnesota New Country School, Case No. 97-2496. (App. 1-4.) Petitioner's timely petition for rehearing was denied on June 12, 1998. (App. 42.) This case was an appeal of Summary Judgement in the District Court filed May 1, 1997 in Fister v. Minnesota New Country School of Civil Action No. 4-96-339. (App. 5.) The action in court was initiated in response to a vote taken on July 9, 1996 of the school board to expel Mary Fister. The expulsion was communicated in a letter sent from the Minnesota New Country School (MNCS) to Mary Fister dated July 23, 1996. (App. 31.) As required by Minnesota Statue (127.31 Exclusion and expulsion procedures) an expulsion hearing preceded the vote. The expulsion hearing occurred on June 28, 1996 and the Hearing Examiner's Report was dated July 2, 1996. (App. 32-35.)

This Petition for Writ of Certiorari is based on U.S.C. Title 28 § 1254.

CONSTITUTIONAL PROVISIONS

The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech."

The Fourteenth Amendment provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

MINNESOTA STATUE

Minnesota Statue 127.29 Grounds for dismissal provides: "A pupil may be dismissed on any of the following grounds:

> "(a) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
>
> (b) willful conduct that materially and substantially disrupts the rights of others to an education; or
>
> (c) willful conduct that endangers the pupil or other pupils, or surrounding persons, or property of the school."

SCHOOL POLICIES

The Minnesota New Country School's Display Policy provided:

> "Displays: Students may decorate their individual work space but all pictures must be placed on bulletin boards, not taped to the wall. However, students may not have pictures/phrases of inappropriate sexual nature, profanity,

> drug, tobacco, or alcohol displayed in the school. Refusal to comply with this rule may result in suspension."

The Minnesota New Country School's Health and Safety Policy provided:

> "Students may in no way endanger the safety, health, or well being of other students or school personnel. Fighting, threatening language, other endangerment or harassment will be grounds for suspension and/or expulsion."

STATEMENT OF THE CASE

This case was brought to the District Court as an action covered under the United States Constitution, specifically the First and Fourteenth Amendments to the U.S. Constitution. The original jurisdiction of this action was stated in the Amended Complaint as following under 28 U.S.C. § 1331.

Mary Fister started the seventh grade at the Minnesota New Country School (MNCS) in June of 1995. At the end of the summer on a MNCS field trip deformed frogs were found and the finding generated national interest. Joe Shea, editor of *The American Reporter*, asked Mary to submit an article for the paper, and she did so. (App. 40-1.) After she submitted the article and it appeared on the Internet she received a letter from the parents of a student at MNCS asking her to remove a portion of the article prior to publication. (App. 39.)

She posted a copy of this letter in her personal work space at MNCS. Over a period of many weeks that followed her posting the letter the school made it known to her that they did not like her doing this, but they did not forbid it. When Mary was not at her personal work area the School removed the letter. She would then post again another copy of the letter. In response to this difficulty, Mary wrote the Minnesota Civil Liberties Union and her parents requested an understanding from the school of whether or not she could or could not post the letter. Specifically, her parents at an advisor's conference asked if she was not allowed to post the letter in her personal work area at the MNCS. Her advisor Dean Lind

told them that he was not stating that she was not allowed to post the letter, but that he did not like her posting the letter.

Eventually the school decided it would not allow Mary to post the letter. She was directed not to post the letter. She stated that she believed she had First Amendment rights, and she continued to post the letter as she found it removed from her personal work area when she came to school in the morning. On April 18, 1996 the school served her notice that she was suspended from school for three days. Mary and I drove to St. Paul and filed a civil action to attempt to obtain a Temporary Restraining Order. We were not successful. On her return to school after the suspension she again posted a copy of the letter in her personal work area. She was suspended again on April 25. The school insisted she sign an agreement that she would not post the letter before she returned to school. She did not sign the agreement. The maximum time allowed for suspension by Minnesota's Pupil Fair Dismissal Act expired, and she returned to school. On June 5 she again posted a copy of the letter in her personal work area, and she was suspended from school pending expulsion. All three notifications of suspension stated that she was suspended for insubordination and did not state any other reason for the suspension. (App. 36, 37. 38.)

The school called for an expulsion hearing. The school provided itself the services of a lawyer to make their case at the expulsion hearing. The school did not provide Mary Fister with the services of a lawyer to make her case at the expulsion hearing. The school attorney and the hearing officer both practiced law in the same county and were acquaintances. They arrived together at the school for the expulsion hearing. The hearing officer found in favor of the school that there was sufficient cause to expel Mary.

After she was expelled and after a settlement conference failed to settle the matter she was allowed by the Court to amend the pleadings. Mary is a fourteen year old with a typical fourteen year old financial resources. Her discovery efforts were constrained. She did not hire a lawyer. Mary and her parents did what they could. We sent interrogatories and filed a motion to compel. We filed a motion for summary judgment to test the idea that the school's display policy was a limited public forum. In summary, we believe we proceeded in good faith through the discovery to do what we could to get ready for trial. Mary realized that at trial she

would only be able to tell her side of the story and question their side of things. After that she would have to let the jury decide the important question of whether or not her posting created a material and substantial disruption.

The school filed a summary motion. In response Mary submitted one measure of the absence of disruption that she had. It was all the email she received after her suspension. Of the 24 messages, only one pertained to the incident.[1] I submitted Mary's response to the MNCS motion for summary judgement and argued in the memorandum that Mary disagreed with the school and that she disputed the fact that there was a substantial disruption. The school won its motion for summary judgment and we appealed. The school won the appeal.

This Petition of Writ of Certiorari is now filed to address the previous rulings of the courts in this case and the questions their rulings raise.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I am asking the Supreme Court to review the case that has been brought to court on Mary Fister's behalf and to consider the questions addressed because I believe both that the questions are important and because I believe the District Court and the Court of Appeals have failed to give Mary Fister an adequate chance to redress her expulsion which was based on the School's judgment that her conduct had "materially and substantially disrupted the educational process" (App. 31)

I believed otherwise and have sought an impartial review. I believe the expulsion hearing that the School provided was not impartial. It was held at the School and the decision was made by school board members none of who excluded themselves from the vote. A majority of the school board members were teachers at the school. Every member of that school board knew Mary and her father and many knew her mother. There had been conflict

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[1] The body of the message stated in full: "I want you to know that I am not on your side. I was at first but now I am not. Please don't send me any of your e-mail, I don't believe that what you are doing is right."

between the family and the school. I do not believe the school's review was impartial.

We came to the Court hoping to obtain at least an impartial trial. The district court decided against that and provided a summary judgment against Mary. The appeals court affirmed that decision. The case did not go to trial.

The School relied on Celotex Corp. v. Catrett, 477 U.S. 317 (1986) in bringing its motion for summary judgment. I think it is an effective decision in understanding the appropriateness of a summary judgment. I have argued before and again state that in Celotex the Court refers to a question of the burden of proof. Celotex held that

> "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." (477 U.S. 317)

Who has the burden of proof? I claim that the School has the burden of proof regarding the question of disruption of speech. Given that burden, I think the summary judgment against Mary was unfortunate. I think the summary judgment was premature in light of the fact that no substantiated claim of harassment has been provided the Court or the Expulsion Hearing Examiner directly by the individuals who were supposedly harassed. As it stands now the school's burden will not be fully explored. Any question regarding how a simple letter could create material and substantial disruption will go unanswered.

To a large extent that argument has been avoided by an understanding that Mary's speech was not protected by the First Amendment. Both the School and I have relied heavily on Tinker v. Des Moines School Dist., 393 U.S. 503 (1969) and Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). In Tinker the Court said that

> "Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to

> avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible." (393 U.S. 503)

The school did not provide evidence of disruption when they suspended Mary. What they did was simply to forbid her expression stating that that her posting was an act of insubordination. This was their official record all the time she was asking for her First Amendment rights. At court the school has argued that Hazelwood sets them free of any burden of the First Amendment. Hazelwood states that this question is about

> "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences." (484 U.S. 271)

I claim that in Hazelwood the Court gave the school clear instructions on all that must be understood before the school could construe correctly that Mary's speech was school sponsored. The summary judgment against her means: she will not be able to argue (1) that the personal work area where she posted the letter was not perceived by anyone as bearing the imprimatur of the school or (2) that the personal work area was not part of the school curriculum or (3) that the personal work area was not supervised by school faculty or (4) that the personal work was not designed to impart a particular knowledge or skill.

Apart from the First Amendment issue the School claimed that Mary violated a " reasonable School Board regulation." (App. 31.) In Court they have specified that Mary violated the School policy dealing with harassment. I think had a jury been asked if the letter was harassment that maybe the question and the answers would have been viewed differently. I believe to view Mary's case in a light most favorable to her requires a different answer to the question of who was harassing who and a different question to the answer that her posting was intolerable.

Further had Mary been able to proceed to trial the charge of harassment against her could have been framed as political in nature. Even if her perception of the First Amendment was misplaced, I think she had the right to show that she did not intend to harass anyone. In fact, I do not believe she harassed anyone. The word harassment is a very broad and wide. It is a word that can mean many things. And it is important to note that the official description through the first three suspensions did not include harassment as a description of Mary's action. The school's form used to document her suspensions had a place to write the reason, and the reason hand written in all three suspensions was that she was insubordinate and not that she harassed anyone. The change to harassment was used to insure her expulsion. I believe the change in the description and the appearance of things was a measure of the politics at the root of her case.

I have raised two questions:

- If a public school student is expelled for materially and substantially disrupting the educational process, then does the student have a right to a trial to address the question of disruption?

- If the facts are disputed can a Summary Judgement be granted to the party with the burden of proof?

The first question exists because Mary was expelled for that stated reason in the letter of expulsion sent to Mary (App. 31.) Mary has disputed that she caused a material and substantial disruption. She has offered evidence to the contrary. The second question exists because I believe the burden of proof that she did cause material and substantial disruption resides with the School. We believe summary judgment is inappropriate if the question of disruption can not be fully addressed, and the burden of proof is much less a burden if it can not be examined at trial.

I raised the question

- If a public school utilizes the services of a lawyer in a disciplinary action against a student, is it equally obliged to provide the services of a lawyer for the student against whom it takes the action?

This question exist because the School created an environment that treated the two sides of the First Amendment question that Mary raised unequally. The School afforded itself a lawyer regarding the Mary's posting prior to Mary's initial suspension. The school utilized the services of that lawyer throughout its disciplinary action against Mary. The school did not provide Mary Fister a lawyer. Arguably, they should have, and it would have made a difference. The hearing was conducted like a little court room. The Hearing Examiner even referenced such in his findings when he stated (App. 34) "Based on the aforegoing FINDINGS OF FACT the Court makes the following CONCLUSIONS." It was a Court like thing that was in session and in that context there was an advantage to the School in arming itself with a lawyer without providing Mary the same. We believe that violated a basic sense of fairness rooted in the Fourteenth Amendment

I raised the question:

- Can pure speech which is not per se offensive be considered harassment?

I raised it because the Hearing Examiner found that the letter was per se not offensive. (Finding # 6, App. 32.)

I raised the question:

- Can evidence be controverted by a general claim of its dispute?

When the question is asked whether the jury could find for the plaintiff and the defendant brought the motion for summary judgment, then the answer should proceed in the light most favorable to the plaintiff. (United States v. Diebold Inc., 369 U.S. 654 (1962). In the case of Fister v. MNCS there is no difficulty with that light given the finding of uncontroverted evidence by the district court judge of material and substantial disruption by the plaintiff. If there was dispute regarding the question of material and substantial disruption, then there is a problem precisely because the answer to the question impacts the question of whether there is enough evidence in quality and quantity that a reasonable jury might find for the plaintiff. Therefore the finding by the

district court judge that there was uncontroverted evidence regarding the standard of material and substantial disruption is crucial.

Regrettably, we believe the finding was in error when the District Court stated that "The school has presented uncontroverted evidence that both the Fish boys were severely affected in their schoolwork" (App. 21.) We stated in our Memorandum Against Summary Motion in Favor of Defendant,

> "If it is relevant to the case that Mary Fister was responsible for any disruption at the Minnesota New Country School, then we dispute that fact here as best we are able and as vigorously at trial as is possible if we are permitted."

In that same Memorandum we provided an affidavit from Mary Fister detailing her understanding of disruption as an issue of fact, which stated plainly that she did not think she was or was the cause of any significant commotion at the school. In the same Memorandum we provided evidence[2] in the form of Mary's email inbox, and we stated "[t]he weight of this evidence is in the absence of any sign of significant disruption"

Finally, the main question raised in this petition is

- When does a public school student have the right to free expression in their personal workspace at the public school?

I raised it because we would really like to know the answer, and I think it is an important question for public school students, particularly for secondary public school students. I believe that

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[2] It is worth noting that in the course of discovery we asked for all of the school's scholastic records or reports of any type. Given the school had only 100 students and had been in existence for two years and given that we had a need to find or measure the academic progress of the school to discern an answer to the question of disruption we believed the request was reasonable. The request was denied both by the school and the court as were nearly all our request for documents. (App. 23). Two points follow: 1) there was not a lot of evidence available regarding the question 2) the evidence that remains is largely tied to an individual's viewpoint of what material and substantial disruption would be at the MNCS. In the light most favorable to Mary her affidavit is of the same quality as the affidavits of the entire school board of the MNCS.

Mary's personal work space at the MNCS was conceptually similar to an Internet web page that might be hosted on a public school web server for the student.

Finally, I think what the school did to Mary was wrong. I think if any public school did it to any student it would be wrong. I think, in her case, the context, the special characteristics, and the political element made her expulsion more than just a simple mistake. It demonstrates an abuse of power and the relative unequalness of power when the school takes on a student. And I believe for this case to be resolved in favor of the school without the benefit of trial endangers the First Amendment's protection for secondary school students in public schools.

In the creation of this document my daughter, Mary, asked if she could add something as well. Her comment follows:

> "I believe that the question of what rights a public school student has, has not been fully addressed. I believe my case touches on an important aspect of the missing answer. I believe this because my question is a lot like the same question in the world wide web. My question is: What kind of rights do students have when displaying items in their personal work area at a public school? The Internet is the biggest new medium where students express themselves. What I did has a close parallel to students home pages on the Internet. You post on you home page, and I posted in my personal work area. Although schools are largely governed in the United States by local school boards and their rule is important, sometimes it is also important that their rule be guided by the Supreme Court on Constitutional questions. I think the question I raised is a Constitutional question of tremendous importance to public school students."

Respectfully submitted,

William Timothy Fister
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APPENDIX OF PETITIONER
William Timothy Fister on behalf of Mary Fister

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United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2496

William Timothy Fister, guardian and parent of Mary Fister,

Appellant,

v.

Minnesota New Country School,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

[UNPUBLISHED]

Submitted: May 7, 1998

Filed: May 11, 1998

Before BOWMAN, Chief Judge, WOLLMAN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Mary Fister appeals from the district court's[1] grant of summary

[1] The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota.

judgment to Minnesota New Country School (MNCS), a charter public school, in her 42 U.S.C. § 1983 action, alleging First Amendment and equal protection violations. We affirm.

The parties' evidence, which we view most favorably to Mary, see Earnest v. Courtney, 64 F.3d 365, 366-67 (8th Cir. 1995) (per curiam), reveals the following. In the fall of 1995, MNCS students were studying deformed frogs found in the area. Mary, a twelve-year-old MNCS student, asked her fellow students for information for an article she was writing on the topic for publication on the Internet. After Mary obtained a quote from an MNCS student for the article, the student's parents wrote the following October 7 letter to Mary:

> Dear Mary:
>
> It has come to our attention you have been soliciting information and quotes from our son . . . regarding the frogs, his feelings about the frogs, and the research surrounding them. . . .[W]e do not want you using information or quotes given to you by our son for publication.

MNCS provided Mary a work space, including a divider on which she could display things; such postings were readily observed by others. In the fall of 1995, the student and his mother noticed that Mary had posted the October 7 letter in her work area, along with a sign stating, "Making a mountain out of a molehill."

MNCS had a written policy allowing students to "decorate their individual work space" but prohibiting the posting of "pictures/phrases of inappropriate sexual nature, profanity, drug, tobacco, or alcohol." Another MNCS policy prohibited students from endangering "the safety, health, or well being of other students or school personnel" in any way, and specified that "[f]ighting, threatening language, other endangerment or harassment" would "be grounds for suspension and/or expulsion."

Dean Lind, Mary's teacher and advisor, attested that after Mary posted the letter, the other student and his brother, as well as the boys' parents, told Mr. Lind the posting was disturbing the boys and was interfering with their ability to receive an education; they

also told Mr. Lind they considered the posting harassment. When Mary failed to remove the posting, MNCS staff removed it; whenever the letter was removed, Mary re-posted it, triggering a pattern of removal and re-posting. The boys' mother continued to complain that the posting was making it "very difficult" for her sons to do their schoolwork.

Mr. Lind attested that the posting and re-posting disrupted education at MNCS, both as to the brothers, and as to students in general. After two instances of being suspended for disobeying the school's directive to remove and not re-post the letter, Mary was again suspended when she posted the letter. Following a hearing, MNCS expelled Mary for a year. In an affidavit presented to the district court, Mary denied engaging in disruptive conduct or noticing any "significant commotion" while she posted the letter; she attributed any commotion, which was neither loud nor "compelling to distraction," to MNCS's disciplinary actions.

The district court entered judgment for MNCS, concluding the school was within its authority in finding that Mary's conduct constituted harassment prohibited by school policy, and in punishing Mary. The court found uncontroverted evidence established that the brothers in question "were severely affected in their schoolwork" because of Mary's "knowing actions" and that her conduct materially and substantially interfered with the school's discipline and operation. The court also rejected Mary's equal protection claim. On appeal, Mary contends that MNCS created a limited public forum, and there was insufficient evidence that the posting caused a disruption or damaged the brothers' academic performance.

We agree with the district court that MNCS did not violate Mary's First Amendment rights, because Mary posted material directed at another student and his family, and school officials had received complaints that the student and his brother felt harassed and were suffering an interference with their education. See Hazelwood Sch. Dist. v. Kulhmeier, 484 U.S. 260, 266 (1988) (noting public school students cannot be punished merely for expressing their personal views on the school premises, "unless school authorities have reason to believe that such expression will 'substantially interfere with the work of the school or impinge upon the rights of other students'"; (quoting Tinker v. Des Moines Indep. Community

Sch. Dist., 393 U.S. 503, 509 (1969)); cf. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 681-85 (1986) (upholding sanction against student for "lewd" speech in student assembly, noting that penalties imposed were "unrelated to any political viewpoint" and that school had to balance student's freedom of expression with society's interest in teaching socially appropriate behavior).

We also reject Mary's limited-public-forum argument because students were not permitted indiscriminate use of their display boards: MNCS had a practice of removing or asking students to remove postings critical of other students or perceived by other students as harassing, and Mary could not recall students ever posting anything offensive or anything directed at anyone else in the school. See Kuhlmeier, 484 U.S. at 267 (school facilities are deemed to be public forums only if school authorities intentionally open facilities for indiscriminate use by general public or by some segment of public).

We further reject Mary's equal protection claim, because she has failed to offer evidence that she was treated differently from others similarly situated to her. See Klinger v. Department of Corrections, 31 F.3d 727, 731 (8th Cir. 1994), cert. denied, 513 U.S. 1185 (1995). Finally, we reject any contention that the district court abused its broad discretion in denying Mary's motion to compel production of certain information. See Duffy v. Wolle, 123 F.3d 1026, 1040 (8th Cir. 1997) (standard of review), petition for cert. filed, (U.S. Jan. 27, 1371); In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig., 113 F.3d 1484, 1490 (8th Cir. 1997).

Accordingly, we affirm the judgment of the district court.

United States District Court
District Minnesota
Fourth Division
4-96-CV-339

William Timothy Fister, guardian
and parent of Mary Fister

ORDER

v.

Minnesota New Country School

Defendant moves to dismiss, pursuant to U.S.C. § 1654, or for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Plaintiff cross-moves for summary judgment. The Court heard oral argument on April 24, 1997.

Based on the files, records, and proceedings herein, and for the reasons given at the hearing, IT IS ORDERED that:

Defendant's motion for summary judgment is granted.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 1, 1997.

/s/ James M. Rosenbaum
JAMES M. ROSENBAUM
United States District Court

UNITED STATES DISTRICT COURT

DISTRICT MINNESOTA

FOURTH DIVISION

Civil No. 4-96-339

William Timothy Fister, guardian
and parent on behalf of Mary Fister,
Plaintiff

-v- Motion
April 24, 1997

Minnesota New Country School,
Defendant.

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE JAMES M. RESENBAUM

Minneapolis, Minnesota

APPEARANCES:

For the Plaintiff	William Timothy Fister
For the Defendant	Ehrich L. Koch Arthur E. Anderson

Reported By: Dawn M. Higby Anderson RPR-CM

PROCEEDINGS

THE CLERK: Your Honor, the matter on the calendar is William Fister versus New Country School, Civil No. 4-96-339. Would counsel please stand and state their appearance?

MR. FISTER: My name is William Fister, I'm here on behalf of Mary Fister.

THE COURT: You are not counsel, you are on behalf.

MR. FISTER: Yes.

THE COURT: Miss Fister, good morning.

MR. KOCH: Erich Koch on behalf of Minnesota New Country School. I also have with me my co-counsel, Mr. Arthur Anderson.

THE COURT: There are cross motions. Have you discussed who will proceed first?

MR. FISTER: No.

MR. KOCH: We haven't.

THE COURT: Why don't you pick.

MR. KOCH: As I scheduled the motions, Your Honor, I'd be happy to go forward.

THE COURT: Feel free.

MR. KOCH: May it please the Court, the Minnesota New Country School is here on two motions. The first is a motion for summary judgment. The second is a motion to dismiss, as plaintiff is unrepresented. As I'm sure the Court has read the motion papers and has read the law and such as well, I will be making relatively brief comments and would just like to highlight a portion of the, umm, issues that we're facing for the Court.

The facts in the matter are relatively straightforward in this particular case, umm, plaintiff claims a First Amendment deprivation by the school when it required her to take down a letter that she was continually posting at her work station. The letter was written by one of her colleagues, or the other student's parents asking that she not use information from her sons with respect to a project her sons had going and not to use her name and information from the sons and articles particularly posted on the Internet. Miss Fister posted a copy of this letter at a work station along with a sign she made up which said "making a mountain out of a mole hill." And that was the only expression that she herself actually made. The contents of the letter of course was that of the parents itself. And the only expression she made was to make fun of the letter. So it was a hurtful expression. The letter was up for over two months without comment by the school. And it was not taken down, or anything like that.

The school, however, received numerous complaints particularly from the boys' parents, who were very concerned because it was tremendously upsetting to the two young men students who were involved, and they considered it to be harassment and invasion of their rights, and were very concerned about what it was doing to their abilities to do their school work. And we provided to the Court affidavits and evidence indicating that these two young men were unable to do their school work for this particular year because of the continual posting of this letter. Also, the school was concerned, it is contrary to the mission of this particular school, which is a special, essentially independent school district. Umm, a charter school. And part of its stated mission is to teach generosity, tolerance, fairness, respect for others, and the like, and they found the letter to be extremely disturbing on that grounds as well.

Finally, Your Honor, the posting of the letter was extremely disruptive to the educational process of the school itself. We have submitted affidavits of the school personnel, administrators and teachers, which make it very clear there's a breakdown of order and respect, that the students were focusing on the conflict instead of on their school work, and many students were complaining about what was occurring here. And of course it took a great deal of time away from the teachers. The teachers in this particular school are also administrators. They run their school. So the time

they had to keep dealing with this letter took away from their abilities to teach the other students.

Finally, they found that the letter itself was a violation of the school's policies, which prevent harassment, psychological abuse, that type of behavior with respect to, umm, students. In the responsive papers, umm, plaintiff has made a point, or tried to establish that the posting of the letter was not disruptive, and they have submitted the affidavit of Miss Fister indicating that she didn't yell or scream or make any noise when she was posting the letter. We'd respectfully point out that that is not the only kind of disturbance to education which can occur through some type of speech. In this particular case, plaintiff's expression was deliberately hurtful. It was not speaking up for a disenfranchised minority, it was not expressing an unpopular political viewpoint, it was not expressing a religious viewpoint, or the type of things that the First Amendment was designed to protect. This is only engaging in a bullying behavior. It was hurtful, cruel, deliberate, and it was extremely painful to the other boys, the two Fish boys, whose parents have written the letter. And most disturbingly, the plaintiff knew this. She admits she knew this, she admits she knew they were unable to do their school work because of her posting of the letter. And it was not the kind of speech that the First Amendment was designed to protect. It is particularly not the kind of speech which is protected in a school itself. So all of those kinds of disruptions are disruptions that are used to justify the school's decision to take down this letter.

The work area which she was posting it is not a public forum, it was never intentionally designated by the school as an area for indiscriminate use by the general public. We've established that in our motion papers. Umm, the work area in question is a small posting board that's in front of each student's desk, and the policies of the school, which are written and have been provided to the Court as part of the motion papers, allow students to decorate that area. And plaintiff acknowledges that she understood that policy and knew that, and when asked what was posted by students in that area, had testified, and which is indeed the case, that students post pictures of cars, landscapes, of people and the like, and actually decorate their areas. She admits that her posting of this particular letter of the students was not decorative. And she also acknowledges that this was an area that was not for

use by anyone else other than the students and that no one else ever posted anything that was directed at any specific student, parent, or teacher, such as her letter.

With respect to, umm, the tests, the legal analysis that we need to apply here., it's important to recall that while students do not give up their First Amendment rights at the school, which is on, quoted, their rights in a school are not coextensive with adults out in a public place. The courts are directed by the U.S. Supreme Court to consider the unique circumstances of a public school when considering this analysis, and the court has held a number of times that schools can regulate student's speech in any reasonable manner. Schools are given very broad discretion in this regulation and they may impose, for example, essentials on speech which is contrary to society's fundamental values, and the courts have made very clear this includes the sensibilities of other students. They can also regulate speech in any reasonable fashion if it's reasonably related to legitimate pedological concerns, and these have been held by the courts to include the inculcation, the teaching of appropriate societal values, respect for others, concern for others, and the like.

And here that is exactly what the school did. It regulated Miss Fister's speech by taking down the letter and asking her to take it down, making it very clear why they were taking it down, because it was so hurtful to other students. And so, umm -- excuse -- with respect ot other legitimate concerns that the, umm, school had, of course there was the concern of inculcation of community values, which has been recognized in the Hazelwood v. Kuhlmeier decision. Also in Fraser. Umm, the school is allowed to teach the boundaries of socially appropriate behavior that's been recognized by the courts as another purpose.

Another concern is that the speech in question was being used to crush other children's sense of self-worth, and the courts have been clear that is another legitimate purpose, in for example the Moeller (phonetic) case. We also as a school district are concerned about the invasion of these other students' right. They have a right to a free, appropriate education in an environment which is not harassing, which is not disturbing to them, in which they can exercise their abilities to become educated. That concern has been recognized in the decision of Tinker. /also, again as I

described before, it was disruptive of the educational process itself, and the school as part of its stated mission, and its foundation and existence is to teach trust, decency, fairness, generosity, tolerance, discipline, courtesy, and respect. And those interests have all been recognized by the courts as reason to reasonably regulate students' speech.

Now, one thing which is important to understand, and which plaintiff confuses, is the school does not need to prove that plaintiff's acts caused materially substantial disruption --

THE COURT: Counsel, you were good enough to suggest that I might have already read the briefs, and you even suggested that you might be brief in your arguments. I'm waiting for the part where you've compressed.

MR. KOCH: I see, Your Honor. I will simply skip ahead then. The only point I'd like to make there is that --

THE COURT: By the second time you quoted from the same Supreme Court section I wondered how many times I was going to have to listen.

MR. KOCH: Sure, no, I appreciate -- the only point with respect to Tinker that I wanted to make clear was as plaintiff did not make political speech, the substantial material disruption does not apply. And that was the only significant aspect with respect to that decision I wanted to cover at that point.

The only other thing which, umm, with respect to that, umm, issue, umm, that I wanted to, umm, make particularly clear to the Court is the, umm, umm, pattern that the school used to deal with the speech, that it did warn her numerous times, she was suspended, she promised, and told she could come back if she did not post it again. Continually did so, and the process throughout the entire school year, and the school did deal with the posting of that letter through that entire time.

Skipping ahead to the protection argument, umm, very briefly, Your Honor, the Court of course is well aware of the elements which need to be established for equal protection claim. The plaintiffs did not respond in their reply papers to the motion,

did not come forward with any evidence which would address that claim. So thus ask that that claim be dismissed as well.

Just a quick question for the Court. We do have our other motion, would you like me to address that at this moment or wait until after plaintiff's reply.

THE COURT: You may reply and briefly, if you feel compelled to do so.

MR. KOCH: Very good, Your Honor. I will leave the podium unless the Court has a question at this time.

THE COURT: I have none.

MR. KOCH: Thank you, Your Honor.

THE COURT: Mr. Fister.

MR. FISTER: Thank you, Your Honor. Counsel for defense. Mary, I'll do my best. I'd like to review the umm, the facts of the case.

THE COURT: The Court is quite well familiar, but you may if you feel the need.

MR. FISTER: Just briefly, I do think there are some things needed. The defense just recently just last week gave us some pictures, I'd like to submit them into evidence or at least give them for review. I think it's important to note the very special characteristics of the school. So I have copies for both the Court and for the defense. The defense already has these, in that they submitted these via their, excuse em, defense supplemental response to plaintiff's request for production of document pursuant to court order, so if I could have these admitted to evidence, umm, and I think if you look at those pictures what you're going to see is almost as much as what you're not going to see. You're not going to see a standard classroom of desks. That did not exist.

Also I would just to be brief, I'd like to make a quick quote from the Minneapolis Star Tribune which describes Thomas Hall

where Mary was for the full time that she was contesting her First Amendment rights.

THE COURT: I'm sorry, what did, you're speaking quickly, you said the story describes what?

MR. FISTER: The Minneapolis Star Tribune is a story about MCS, Minnesota Country School, and there's a brief excerpt which describes Thomas Hall, the main building at MCS, and the building Mary was for the most part, for all the part that she was contesting her First Amendment rights. And basically, ah, the article says, umm, in quote, Thomas Hall doesn't feel like the bower [bar] it once was, but it doesn't feel like a provincial classroom either. Teenagers mill about talking of teachers working on computers, sitting at tables in groups, there are no desks, every student has a space at the countertops ringing the room, littered with pop cans, papers and books. And that's it. And I think that the point is, it's very, very different there. And the context of what Mary was doing should be taken in light of where she was.

One thing I do want to point out that the characterization of Mary's statements during deposition, umm , are totally different than what Mary, the characterization that about decorating, stuff like that, that's up for grabs. We certainly see it a lot different than the, ah, than the MCS stated it just now in his statement. I think you already, you know the display policy so I don't need to go over it. Okay, I'll skip by that.

At the end of October the thing I want to review briefly here, at October 1995 Mary did a research project, and she submitted it to Joe Shea, American Reporter, and editor of that newspaper. He said no, redo it, get a couple quotes from students. Mary got on the phone, got a couple quotes from students, put it to the American Reporter, and they published it. After they published it, she got a letter from the Fishes saying, she, she got a letter from another student saying please don't use the quotes from our son. It was too late. I think that's an important point that I want to get across.

The other important point Mary got, she made a copy, she posted it in her work area. Of course she didn't -- there were a lot of things Mary posted in her work area, and this wasn't the only

thing, and she, by the display policy she could have a reason to believe that it was entirely appropriate.

Ah, relative, well relative to the facts, after, umm, she posted it she came back to school, and found that it had been taken down, and no one told her why, it was just gone. She asked, she couldn't find out. She came back and posted another, and again it was taken down. Eventually she asked, she asked, do you know who's taking my letter down? And they said, we are. They would not say at the time you cannot post a letter, they did not tell her that. We, of course, being informed, talked to Dean Lind (phonetic) her advisor. He said he didn't like it. When we said does that mean she can't post it, he wouldn't say that she couldn't post it. He said we don't like it. I don't like it. I think it's like teasing. He never said anything about harassing, he never said anything about disruption. He said it's kind of like teasing. I don't like it. But when asked specifically, and more than once, are you saying Mary can't post it? He said no. He was not saying she couldn't post it. Eventually they got down to writing a letter saying if Mary posts a letter again she will be suspended. She posted the letter again.

I would like to enter another thing into evidence, which they left out of their, ahh, the notification of suspensions. There's four of them. They put three of them in. And the second one is the one they left out. If I could give you this, and give the Court this, all I'm trying to do is complete the, the set of, I want to briefly go over these because I think in some ways you could argue this is the most important document, all four of these. It has great big letters of notification of suspension, and what Dean Linn wrote there is important. As well what he didn't write. He wrote the same thing essentially every time. He hand wrote it. And in three line he wrote the first time on April 18th, not complying with request, do not post the letter from the Fishes. Slow down? Okay.

THE COURT: A little.

MR. FISTER: Thank you. The second time, and he didn't write anything else. That's all there is there. The second time on the 4/25 putting up letter from Fishes, after being directed not to. The third the same, the fourth when Mary wasn't home, they sent an extension, they had plenty of room, they could have said disruption, they could have said harassment but what did they refer

to when it was important when they wrote out the document that essentially made her suspension official? They did not say anything except you're putting up a letter we told you no to. There's a display policy, which Mary relied on, and by that time of course Mary was relying on her First Amendment rights. I think that's the facts as we know 'em. The legal issue want to cover briefly.

Mary will admit, I think, that, yes, it could have been embarrassing to the Fishes, but the letter, you've seen it, it's not a big deal. But embarrassing is covered pretty well in the Supreme Court. I've got Carey v. Population Service International, 431 U.S. 678. The one I'll from, one sentence NAACP v. Claiborn, 458 U.S. 886, and Justice Stevens in that case in the opinion said speech does not lose its protective character simply because it may embarrass others. The question, the other -- legal issue in a sense is there is an agreement between Mary and the school that had a display policy, and the school broke the agreement.

If you go past the display policy and look at the First Amendment, we have submitted a motion for limited public form [forum]. I think it's a neat idea. That essentially the school created a display policy and they didn't say, we're going to give your a grade on this, but you can't put anything you want there. They said you can't put something abut tobacco and this, they didn't put any little letters saying if we don't like it you're going to take it down. It was fairly indiscriminate use after you past the point talking about tobacco and alcohol.

As far as access to the whole population, the Supreme Court has made some reference to the fact this doesn't have to be the whole population. Only has to be part of the population. The part we argue they're referring to is the students. We have that in our brief, so I won't go over it again.

If you get by the limited public forum, and you move to the First Amendment in general, I think Mary's still well protected, given the context if you look at the pictures, given the display policy, given how much noise Mary didn't make, given the fact it's pure speech, we're not talking about any laches, it's pure speech.

THE COURT: Mr. Fister, relax.

MR. FISTER: Okay, Given that it's pure speech, I think she has a very good First Amendment argument, even if the limited public forum doesn't fly.

THE COURT: What did she say? What was her speech?

MR. FISTER: Did she -- I'm sorry, Your Honor.

THE COURT: You say it was speech. What was her expression?

MR. FISTER: Her expression of speech was simply the letter.

THE COURT: Whose letter was it?

MR. FISTER: The letter was from the parents of a boy at the school.

THE COURT: Okay.

MR. FISTER: The letter was from, but it was Mary's letter, and it was, if nothing else it was an example of prior restraint. I can't tell you why exactly Mary put it up, but I'm sure she believes sincerely that she had every right ot put it up. And she certainly was not trying to disrupt anyone. Certainly not trying to cause a harassment. And none was, none was ever mentioned to her other that the school, again, I pointed to the notification of suspension, there is no mention there of harassment

Let me sum up. If you look at the picture, you look at the display policy, you look at the First Amendment, and you've got a decent argument. We think we should at least get to trial. We know in the Fridley case if there's a, actually I'll bring up Fridley. Live with the sword, you die by the sword, I was thinking today, but Fridley has one footnote, which has worried me all week long, then I get here look at Fridley and I was going to use Supreme Court, New Jersey TLO, I think they are neat. I have to take off my glasses to read this, it's small print. But basically in Fridely, which is the case on this court, so it's at 686 F. Supp. 1387. In the

footnote two, it's saying, defendants draw the court's attention to the phrase majority statement the prior Supreme Court --

THE COURT: Sir, you are speedy when you speak freely. By when you read from cold text you are really speedy.

MR. FISTER: I'll slow deliberately down.

THE COURT: Okay.

MR. FISTER: I'm sorry again.

THE COURT: That's okay. When you see smoke rising frmo my reporter's fingers you know your are rapidly reaching that point and they are in flame.

MR. FISTER: It's an interesting quote, last time we were here in loco parentis was a big idea. It's the major idea that Mary competes against in a sense with the First Amendment. Fridley says this, it's one way of looking at this. Defendants draw the Court's attention to the phrase of majority statement that prior Supreme Court decisions recognized the obvious concern of school officials acting in loco parentis, protect you from exposure to sexually explicit, indecent, or lewd speech. This language, however, must be viewed in its proper context. Although school officials concerned for the protection of children derives from the capacity in loco parentis, their authority to protect the children in their schools derives from the state and it's constrained by the Bill of Rights. And we submit that it was constrained by the First Amendment in the Bill of Rights in this case. And that's all I have to say.

THE COURT: Thank you, sir.

MR. FISTER: Thank you.

THE COURT: Do you feel constrained to make a further comment?

MR. KOCH. Just a brief one, Your Honor. Thank you, Your Honor. I just merely wanted to address the photographs that were provided to the Court and counsel at this time and would

invite the Court, umm, attention of page 5 of those photographs, the upper righthand part. The are black and white photographs, and of course difficult to, umm, view, but it gives you some, the Court some indication as the type of things that were posted by the students, and even in the photocopy it's clear that they're photographs, pictures, posters, and the like. I thought that was the only thing I find in those pictures that might be of interest to the Court. Thank you, Your Honor.

THE COURT: Thank you. The defendant seeks dismissal pursuant to 28 U.S.C. Section 1654, or summary judgment pursuant to Rule 56 of the Rules of Civil Procedure. The plaintiff has cross moved for their own motion for summary judgment pursuant to Rules of Civil Procedure 56.

The defendant's motion for summary judgment is granted and plaintiff's motion for summary judgement is denied.

The plaintiff, Mary Fister, appears through her father, presumably in a next friend capacity, William Timothy Fister. Ms. Fister is a resident of St. Peter, Minnesota. The defendant, Minnesota New Country School, is a charter public school, operating in LeSueur, Minnesota. At all times relevant, Miss Fister was a student at the New Country School. She is no longer enrolled there at this time.

In the summer of 1995, students at that school discovered, apparently, frogs of interest in LeSueur County. Miss Fister wrote an Internet article concerning that discovery, and relied upon certain quotes which were obtained from other students. One of the students quoted, Jeffrey Fish, asked her not to use the quotes. As a result, Mr. Fish, or Jeff Fish's parents, wrote to Ms. Fister, and asked her not to use the quotes in her Internet article. Thereafter, Miss Fister posted the Fish parent's letter in her work area at MNCS with a sign, excuse me, stating "mountain out of a mole hill." It is not contested that it remained there, posted, and public, for a period in excess of several weeks.

The Fishes interpreted this action as harassment. And the school officials so informed Miss Fister. The parents of Miss Fister, or Miss Fister, both, asked the school administration why, and they said it approximated or approached teasing. Mr. Fister

argues this morning that harassment is not teasing, but it was clear that the school was concerned in this regard.

The school officials repeatedly removed the letter. Each time they did so, Miss Fister reposted it. Jeff Fish and his brother, appears not to be in controversy, were disturbed by the actions and the posting of the letter, in a fashion which materially contributed to difficulties they had in school. They have each transferred from the school.

Minnesota New Country School officials report that Miss Fister's actions were also disruptive to other students. School officials then later determined that Miss Fister violated the Minnesota New Country School policy which prohibits students from, quote, endangering the safety, health, or well being of other students, close quote, through, quote, fighting, threatening language, or other endangerment or harassment, close quote. I reference here Policy and Operation Procedure, paragraph 14. After this notice, and after advice in that regard on April 19, 1996, Ms. Fister was suspended. Miss Fister sought the temporary restraining order of this Court, which was denied on April 19.

On her first day back at school, subsequent to her suspension, Miss Fister again posted the letter, and was again suspended. The Court does not deem it necessary to go further into the fact that she said that her rights were being violated, put out a memo, et cetera, et cetera, they are not germane to this Court's determination.

At that time the school informed Miss Fister and her parents that any further posting of the letter would result in a suspension and initiation of expulsion proceedings, and in early June 1996, Miss Fister again posted the letter and was suspended as had been suggested.

On July 23, 1996, Miss Fister learned that the school board of the Minnesota New Country School had expelled her for a period of a year. And now through her father she files an amended complaint with the Court on November 19, 1996, and alleges that the Minnesota New Country School violated her First Amendment right to freedom of speech and her 14th Amendment right to equal protection and seeks to have the expulsion lifted.

The defendant now argues, among other things, that its discipline of Miss Fister fell within its authority, and as such did not violate Miss Fister's constitutional rights. The defendant further argues that it treated Miss Fister no differently than any other similarly situated child who had done the same sorts of things.

It is axiomatic that summary judgment is appropriate if there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law, referring to Federal Rule of Civil Procedure 56(c), and Celotex v. Catrett at 477 U.S. 317 at pages 32 and 23, and its companion case Anderson V. Liberty Lobby at the same volume, page 242 at page 246, 1986. Each party agrees there is no factual dispute, and the matter is ripe for summary judgment.

Concerning the First Amendment claim, it is clear that although students are entitled to certain First Amendment protections, it is settled that, quote, the constitutional right of students in public school are not automatically coextensive with the rights of adults in other settings. I cite Bethel School District v. Fraser at 478 U.S. 675 at 682, 1986. Schools, whose duties include teaching values and civility, are properly accorded great latitude in determining what manner of speech is appropriate in the classroom, citing the same case at page 683. Therefore, while the school may not bar speech that merely expresses the students' personal views, a school may punish students whose speech, quote, materially and substantially interferes with the requirements of appropriate discipline and the operation of the school, closing the quote, and that is from Tinker v. Des Moines at 393 U.S. 503 at page 509, 1969; and further reiterated at Hazelwood v. Kuhlmeier at 484 U.S. 260, at 266, 1988.

Here, the Court finds that based on the facts adduced before the Court, Minnesota New Country School acted within its authority in punishing Miss Fister. The school apparently prohibits speech that threatens or harasses other students. The fine distinction which has been argued that teasing, and teasing here which is clearly known to be disturbing to another student, is not harassment. The reality is that they were children who were unhappy with what was being posted, and not because of the nature of political view, but simply because they felt it was harassment.

Now, in that view, and material and substantial interference within the contemplation of Tinker, was well fulfilled. Thus Minnesota New Country School did not act beyond its bound in determining that Miss Fister's posting of the letter constituted harassment with the contemplation of the policy. The school has presented uncontroverted evidence that both the Fish boys were severely affected in their schoolwork as a result of Miss Fister's knowing actions, and although Miss Fister was free to disagree with the Fishes' reaction to her articles, she was no free to continually express her disagreement in a mode which interfered with her colleagues' education.

I now determine further that even if this was a First Amendment protected posting, and at this moment I need not make that determination, it was posted for a full two months. She had a chance, therefore, to express herself to the full. And a reasonable regulation under these circumstances did not in any fashion impair her rights. And on that claim, summary judgement is therefore granted in favor of the defendant.

With respect to the second equal protection claim, quoting again, the first step in an equal protection case is determining whether the plaintiff has demonstrated that she was treated differently than others who were similarly situated to her, closing quote. Cite Klinger v. Department of Corrections at 31 F.3d 727, 731, Eighth Circuit 1994. Here the plaintiff has made no such showing whatsoever, and in fact did not reply to this branch of the argument in any fashion. She does not even suggest that she was treated differently than anyone else at Minnesota New Country School, let alone proffer any evidence in that regard.

In the face of an adequately and accurately placed motion for summary judgment, as to which no objection has been made and no contrary evidence has been submitted, summary judgment is granted on the equal protection claim. Therefore, both claims are rejected on the basis of summary judgment, and the defendant's motion is granted, and the plaintiff's motion is denied. And that'll be the ruling of the Court.

(Recess.)

United States District Court
District Minnesota
Fourth Division

William Timothy Fister, guardian
and parent of Mary Fister — Civil Action 4-96-339

Plaintiff,

V. — ORDER

Minnesota New Country School

Defendant.

William T. Fister, PRO SE.
Sheila Bjorklund, Esq., for the defendant.

THIS MATTER came for hearing before the undersigned United States Magistrate Judge on April 3, 1997, on plaintiff's motion to compel discovery.

Based upon the files, records, and proceedings herein,

IT IS HEREBY ORDERED that:

1. Plaintiff's motion to compel discovery is GRANTED IN PART and DENIED IN PART as follows: [#58]

    a. With respect to Interrogatory No. 7, plaintiff's motion is denied.

b. With respect to Interrogatory No. 8, plaintiff's motion is granted.

c. With respect to Interrogatory No. 9, plaintiff's motion is denied.

d. With respect to Interrogatory No. 10, plaintiff's motion is denied.

e. With respect to Interrogatory No. 11, plaintiff's motion is denied.

f. With respect to Interrogatory No. 12, plaintiff's motion is denied.

g. With respect to Interrogatory No. 14, plaintiff's motion is denied.

h. With respect to Interrogatory No. 15, plaintiff's motion is granted to the extent he seeks the names of the Minnesota New Country School (MNCS) board members present at the meeting at which the MNCS Board voted to expel Mary Fister.

i. With respect to Interrogatory No. 16, plaintiff's motion is denied.

j. With respect to Interrogatory No. 17, plaintiff's motion is granted

k. With respect to plaintiff's Requests for Production of Documents, plaintiff's motion is denied except the defendant shall provide photographs of activities in and around the school for the period of January 1, 1994 to the present.

Dated April 7, 1997

/s/ Franklin L. Noel
FRANKLIN L. NOEL
Chief Magistrate Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-2176MNMI

In re:	*	
	*	
William Timothy Fister, guardian	*	
And parent on behalf of	*	Petition for Writ
Mary Fister,	*	of Mandamus
	*	
Petitioner.	*	
	*	

JUDGMENT

Petition for writ of mandamus has been considered by the court and is hereby denied.

May 13, 1996

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

United States District Court
District Minnesota
Fourth Division
4-96-CV-339

William Timothy Fister, guardian
and parent of Mary Fister

ORDER

v.

Minnesota New Country School

The plaintiff, by her father, William Timothy Fister, has made a second application for a temporary restraining order, pursuant to Rule 65 of the Federal Rules of Civil Procedure. A telephone hearing was held on May 6, 1996.

The plaintiff's father is not an attorney admitted to practice in this Court or in the Supreme Court of any state. Mr. Fister is permitted to represent his daughter, pro se, in this Court. Plaintiff and her father are advised, however, that although pro se pleadings are subject to a deferential review, they must comport with the rules of the United States courts. Faretta v. California, 422 U.S. 806, 834-35 n.46 (1975); Schooley v. Kennedy, 712 F.2d 372, 373 (8th Cir. 1983).

Based on the files, record, and proceedings herein, and for the reasons stated at the hearing, IT IS ORDERD that:

1. Plaintiff may submit an amended motion which complies with the rules of the Court.

2. Plaintiff's motion is denied without prejudice.

Dated: May 7th, 1996

/s/ James M. Rosenbaum
JAMES M. ROSENBAUM
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT MINNESOTA

FOURTH DIVISION

Civil No. 4-96-339

William Timothy Fister, guardian
and parent on behalf of Mary Fister,
Plaintiff

-v- Telephone Conference
May 6, 1996

Minnesota New Country School,
Defendant.

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE JAMES M. RESENBAUM

Minneapolis, Minnesota

APPEARANCES:

For the Plaintiff — William Fister, Pro Se

For the Defendant — Arthur Anderson

Reported By: Dawn M. Higby Anderson RPR-CM

PROCEEDINGS

(Roll call by AT&T operator: Mr. Anderson? Present. Mr. Fister? Present. Miss Fister? Present. Judge Rosenbaum.)

MR. ANDERSON: Judge, I also have Dean Lend here.

MR. FISTER: And my wife is on the phone upstairs.

THE COURT: All right. And what is your wife's name?

MRS. FISTER: Barbara Fister.

THE COURT: The matter is before the Court on an application for an additional restraining order filed over the signature of Mr. Fister. And the reason I called was, Mr. Fister, your are not an attorney. Your are not admitted to practice in this court. I was willing to permit you to take some steps previously on the last appearance, but this is not a place where you will be permitted to plead. The rules do not provide for it. You do not have the competence to represent your daughter in the matters that are before the Court, and I cannot permit that. And it didn't seem reasonable for people to come dragging all the way to Minneapolis to hear that.

MR. FISTER: Can I make a motion, a request on my daughter's behalf?

THE COURT: Who's speaking?

MR. FISTER: This is Mr. Fister.

THE COURT: Mr. Fister, you do not have the power nor the authority nor the training to make a motion.

MR. FISTER: I don't understand all of what you're saying but I certainly have the interest to make a motion and I'm trying to represent my daughter's interests.

THE COURT: What I'm telling you, sir, you are not permitted to represent your daughter's interest.

MR. FISTER: In your courtroom, sir?

THE COURT: In the United States District Court. You're not an attorney.

MR. FISTER: Could I entertain a motion for summary judgment, or is that also out of line?

THE COURT: Sir, it is questions like that that are the reason you are not permitted to make motions or plead in this court. On that basis, sir, at this time there is nothing before me. And I will not entertain any motions at all.

MR. FISTER: Is the suit still before you?

THE COURT: Sir, why don't you consult with an attorney. Right now I have a filing that's before the Court. Okay?

MR. FISTER: Well, not okay by us, sir, but I have to accept your judgment, don't I?

THE COURT: Well, on the basis of the fact there's nothing pending before the Court, there's nothing further for the Court to do at this time, and the hearing, unless there's objection, will be --

MR. FISTER: Well, I do object, and I'd like to raise a motion for summary judgement on this matter.

THE COURT: All right. Well, that motion, since you lack either standing or competence to make such a motion, and I mean that in a legal sense, sir, as opposed to any other, I refuse and decline to entertain such a motion. Thank you very much.

(Pause.)

THE COURT: You're permitted to say good-bye, gentlemen.

MR. FISTER: Good-bye.

MR. ANDERSON: Good-bye.

(Recess.)

(3/94)
Minutes of Proceedings* (x) Judge ( ) Magistrate James Rosenbaum
Motions Reporter/Tape No. Dawn Sampson

United States District Court, District of Minnesota 4th Division

William Fister, et al.	*William Fister*
	Mary Fister
	Barbara Fister
Plaintiff(s)	Plaintiff(s) Counsel

Vs. Civ *4-96-339*

Minnesota New Country School	*Arthur Anderson*
Defendant(s)	Defendant(s) Counsel

Phone Conference
(x) Moition Minutes

ORDER TO BE SUBMITTED BY: (x) court ( ) plaintiff ( ) defendant

Pro Se motion re: expulsion - denied. The Court has nothing before it.

ORDER TO FOLLOW.

Dated: *5-6-96*

/s/ unreadable
(x) Deputy Clerk ( ) Magistrate

* This is a detailed representation of a form completed by hand by the Court.

United States District Court
District Minnesota
Fourth Division
4-96-CV-339

William Timothy Fister, guardian
and parent of Mary Fister

ORDER

v.

Minnesota New Country School

This Matter is before the Court on plaintiff's motion for a temporary restraining order, pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Court heard oral argument on April 19, 1996.

Based on the files, records, and proceedings herein, and for the reasons given at the hearing, IT IS ORDERED that:

Plaintiff's motion is denied.

Dated: April 23, 1996

/s/ James M. Rosenbaum
JAMES M. ROSENBAUM
United States District Judge

July 23 1996

Mary Fister
314 South Third Street
St. Peter, MN 56082

Dear Mary:

You are hereby given notice, and this letter shall constitute such notice, that by appropriate action taken by the School Board of Minnesota New Country School ISD #4007 at a special closed meeting held July 9, 1996 you are expelled from attendance at Minnesota New Country School ISD #4007 for a period of one (1) year from and after July 9, 1996.

This action was taken by the School Board based upon a finding that you engaged in conduct and activity which constituted a willful violation of a reasonable School Board regulation and direction which willful conduct on your part materially and substantially disrupted the education process of others in the school.

As and for alternative education, you are direct to seek such education in the public school system in St. Peter, Minnesota, of which municipality you are a resident.

MINNESOTA NEW COUNTRY SCHOOL
#4007

BY: /s/ Malcolm Maxwell
Malcom Maxwell, Chair

cc: Tim Fister
Barbara Fister

IN RE THE DISMISSAL OF MARY FISTER

FINDINGS, CONCLUSIONS
AND RECOMMENDATION

A dismissal hearing was held on Friday, June 28th, 1996 regarding the dismissal of Mary Fister before the undersigned Michael T. Keogh acting as independent hearing examiner. The Minnesota New Country School, I.S.D. No. 4007, hereafter MNCS, appeared by and through its counsel, Arthur E. Anderson, of Le Sueur, Minnesota. The pupil, Mary Fister, appeared on her own behalf and by and through her father, Tim Fister. Based upon all the files records, exhibits and testimony taken the hearing examiner makes the following FINDINGS OF FACT:

1. That the hearing was conducted in closed session. The pupil and her parent were given an opportunity to request an open hearing which they declined.

2. During the 1995-1996 school year the pupil, Mary Fister, was a seventh grade student at MNCS.

3. That testimony was taken from Dean Lind, the pupil's advisor and instructor, and from MNCS advisor and instructor Kim Borwege.

4. That during the 1995-1996 school year a dispute arose between Mary Fister and another student regarding a student project. That the other student's parents wrote a letter to pupil, Mary Fister, requesting that she not use information or quotes from their son regarding the research project. The letter was sent by mail to Mary Fister's home.

5. A week or so prior to February 14th, 1996, the pupil, Mary Fister, posted on her bulletin board near her work area the letter from the other student's parents.

6. The letter is not per se inappropriate or offensive

7. The parent who wrote the letter to Mary Fister has two students in MNCS.

8. That these two students viewed the posting by Mary Fister as inappropriate and in the nature of harassment.

9. These feelings were communicated to advisors at MNCS.

10. On February 14th, 1996 an advisor of MNCS met with the pupil, Mary Fister, and her parents and advised that the letter she had posted was disruptive to the other students and was viewed as harassment by the two students whose parent had written the letter. The advisor directed that the letter be taken down and not posted on the bulletin board. Between February 14th, 1996 and April 18th, 1996, the pupil, Mary Fister, continued to repost copies on at least five occasions. Each time another copy would be posted an advisor at the school would ask that Mary remove it or remove it themselves.

11. MNCS has in place a policy prohibiting pupils from posting any material that is objectionable or interferes with the learning process of other students.

12. On April 18th, 1996, MNCS suspended the pupil Mary Fister, for three days commencing April 19th, 1996 because of the pupil's continued posting of the letter after being directed not to do so on numerous occasions by MNCS staff.

13. The reason stated for the suspension was insubordination for continual posting of the letter in violation of school policy.

14. The pupil, Mary Fister, on April 18th, 1996, posted a statement on her bulletin board "I have been suspended for (in my opinion) no real reasons. This school has violated my rights." signed Mary Fister.

15. On April 18th, 1996, Mary Fister sent an E-Mail to all the students at MNCS which states: "I have been suspended. If you want to know why, ask around, about haalf (sic) the people in Thomas hall know the story. I don't know when I'll come back. The school has violated my rights. The gong is vibrating. (sic)"

16. The pupil, Mary Fister, served her three day suspension commencing April 19th, 1996.

17. Mary Fister returned to school following the initial three day suspension and on April 25th, 1996 again reposted the subject letter.

18. MNCS gave Mary Fister notice of suspension for five days beginning April 25th, 1996.

19. Following the second suspension the pupil, Mary Fister, posted the following notice on her board. "The school has suspended me twice because of something I have posted in my person work area. They are now saying that they will expel me if I post it again. I believe my first amendment rights are being violated and denied."

20 On June 24th, 1996, Mary Fister again reposted the letter after returning from the second suspension. She was notified of the suspension for posting the letter after being notified that doing so would result in an additional five day suspension pending expulsion.

21. The school provided modification of the pupil's schedule to permit completion of school work allowing her to complete seventh grade in a timely manner.

Based on the aforegoing FINDINGS OF FACT the Court makes the following CONCLUSIONS.

1. The school provided an alternative education program prior to the dismissal proceeding which permitted her to complete seventh grade.

2. That the repeated posting of the letter constitutes a willful violation of a reasonable school board regulation.

3. That the repeated posting of the letter in violation of school policy constituted willful conduct on the part of the student which materially and substantially disrupted the education process of others in the school.

Based upon the aforegoing, it is hereby recommended that there is sufficient cause for dismissal of Mary Fister form the Minnesota New Country School.

Dated: July 2, 1996.

/stamped/ MICHAEL T. KEOGH
Michael T. Keogh
Hearing Officer

MINNESOTA NEW COUNTRY SCHOOL*
DISTRICT #4007
NOTIFICATION OF SUSPENSION

Dear Parents and Student:

Mary Fister has been suspended from the Minnesota New Country School for *5* days because of the following infraction(s):

Posting letter from the Fish's after being notified doing so would result in 5 day suspension pending expulsion.

Suspension will begin *immediately* ~~at 8:30 AM.~~ The student may return to school on _____ at 8:30 AM provided there is a parent/advisor conference prior to returning to school.

If there are any questions regarding this suspension, please feel free to call the school at 612-665-4033. Refer to the discipline policy guide for reference, which was mailed to each family and given to each student.

/s/Dean C. Lind Advisor **

6/4/96 Date

(Copies will be made for the student's permanent record. The Student Fair Dismissal Act of 1974 may be implemented after the first suspension upon advisement of Board.)

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* This is a detailed representation of a form completed by hand by the School

** At some point after the initial document was created the following was handwritten in: "The date is wrong. The suspension occured (sic) on June 5, 1996. " signed Dean Lind.

MINNESOTA NEW COUNTRY SCHOOL*
DISTRICT #4007
NOTIFICATION OF SUSPENSION

Dear Parents and Student:

Mary Fister has been suspended from the Minnesota New Country School for *5* days because of the following infraction(s):

Putting up letter from Fishs after being directed not to.

Suspension will begin *4/25* at 8:30 AM. The student may return to school on *May 2* at 8:30 AM provided there is a parent/advisor conference prior to returning to school. **

If there are any questions regarding this suspension, please fee free to call the school at 612-665-4033. Refer to the discipline policy guide for reference, which was mailed to each family and given to each student.

/s/ Dean C. Lind Advisor

4/25/96 Date

(Copies will be made for the student's permanent record. The Student Fair Dismissal Act of 1974 may be implemented after the first suspension upon advisement of Board.)

---

* This is a detailed representation of a form completed by hand by the School

** The statement "See letter dated 4/25/96" was handwritten here near the right margin.

MINNESOTA NEW COUNTRY SCHOOL*
DISTRICT #4007
NOTIFICATION OF SUSPENSION

Dear Parents and Student:

Mary Fister has been suspended from the Minnesota New Country School for *5* days because of the following infraction(s):

Not complying with requests to not post a letter from the Fishs.

Suspension will begin *4/19* at 8:30 AM. The student may return to school on *4/24* at 8:30 AM provided there is a parent/advisor conference prior to returning to school.**

If there are any questions regarding this suspension, please fee free to call the school at 612-665-4033. Refer to the discipline policy guide for reference, which was mailed to each family and given to each student.

/s/ Dean C. Lind Advisor

April 18, 1996 Date

(Copies will be made for the student's permanent record. The Student Fair Dismissal Act of 1974 may be implemented after the first suspension upon advisement of Board.)

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* This is a detailed representation of a form completed by hand by the School

** The statement "Please refer to the letter dated April 17" was handwritten here near the right margin.

Oct 7, 1995*

Dear Mary:

It has come to our attention you have been soliciting information and quotes from our son, Jeff, regarding the frogs, his feelings about the frogs, and the research surrounding them. As Jeff's parents, we do not want you using information or quotes given to you by our son for publication.

Sincerely,

/s/ Tom Fish

Mr. and Mrs. Fish

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* This is a detailed representation of the copy of the letter posted by Mary Fister in her personal work area at the Minnesota New Country School.

Mary Fister
St. Peter MN
deformed frogs
10/5/95
606/$6.06

STUDENTS SEEK CAUSE OF FROG DEFORMITIES

by Mary Fister
American Reporter Correspondent

HENDERSON, MN – In August, Cindy Reintz, a teacher at the Minnesota New Country School, took a group of students on a nature walk on the Ney farm in Henderson, MN. They caught some frogs and realized they were "weird". They were surprised to find that a large number of the frogs they caught that day had deformities.

The Minnesota New Country School is an innovative new charter school located about ten miles south of the frog pond in the small town of LeSueur. Around 90 students are enrolled, and there are five teachers—at this school, called advisors. Students work at their own pace and design individual projects, choosing their own way to fulfill the school's curricular goals. The school has a strong technology program to support student work. The three classroom buildings house about 40 computers, three printers, two scanners, and are connected to the Internet.

The students who found the frogs are striving to understand the cause of their deformities. Around fifteen students go to the pond once or twice a week and hold frog meetings to update each other on what's happening. Students are both fascinated by the discovery they made and worried by it. Jeff Fish, a thirteen year old student, said "At first I thought it was weird; now I think it's cool." But Reta Bovee, seventh grader, said "I feel really sorry for them. It must be miserable trying to hop."

In all, they have caught between 350 and 420 frogs. They estimate that half of the frogs at the pond are deformed. Almost all of the deformities appear in the hind quarters. Most of the abnormal frogs have poorly formed legs. Some have tumors or no pigment in their legs. A large number have multiple or missing limbs. One that they caught had no hind legs at all. Some had extra webbed feet; a few had missing eyes.

There have been reports of deformed frogs from sites located in a three mile radius from the pond. Some students speculate that if these abnormalities are hereditary the deformed frogs in the surrounding area might have been "leftovers" from when they migrated to the Ney farm.

Students' inquiries on Internet have yielded a number of theories offered by scientists and biology students around the world. It has been suggested that pesticide containers may have been rinsed out with pond water, and the water returned to the pond. Others raised the possibility of heavy metal contamination, parasite infestation of developing frogs, or illegally dumped chemicals. Some believe that the thinning ozone layer may have played a role by allowing harmful UV radiation to affect eggs laid in shallow water. Some also suggest that this could be a natural aberration, that a single frog laid all of the deformed frog eggs, passing along a genetic mutation.

Numerous tests and observations have been made both by students and by state authorities concerned about the phenomenon. Students determined that the pH level of the water is 9.5, much higher than average. The pond appears to have a healthy ecosystem, with many plants and animals. Scientists have taken samples of soil and water and are conducting tests for the presence of heavy metals, but the results are not yet available. Scientists also plan to breed pond frogs caught by the students to see if the deformities are hereditary. Meanwhile, the students at the Minnesota New Country School are using the unusual discovery to learn more about science and, perhaps, through their efforts to contribute to an understanding of the frogs' deformities and their cause.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2496MNMI

William Timothy Fister,

Appellant,

Order Denying
Petition for Rehearing
and Suggestion for
Rehearing En Banc

vs.

Minnesota New Country School,

Appellee.

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 16, 1998

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit